Court No.3

Criminal Appeal No.1249/2001
(Old No.137/1990)

1. Balbir Singh alias Fauji ……....Appellants.

2. Jarnail Singh

Vs.

State of ……..…Respondent.

Hon'ble Irshad Hussain J.

This is an appeal against the judgment and order dated 18-1-1990 passed by Ist Additional Sessions Judge, Nainital,camp at Haldwani whereby the appellants were held guilty and were convicted for an offence punishable under section 307/34 I.P.C. They were sentenced to undergo R.I. for 2½ years each and to pay a fine of Rs. 1000/- each.

Heard Sri Pankaj Miglani learned counsel for the appellants and learned A.G.A.

The learned counsel for the appellants did not dispute the finding of the learned Sessions Judge as regards the reliability of the prosecution evidence in regard to the charge framed against the appellants. More so in view of the statement of injured Gurmej Singh who had sustained injures at the hands of his real brothers who are the appellants. Learned counsel for the appellants argued that since the quarrel was among the real brothers a compromise has been entered into between them and they are living together at peace. An affidavit of the injured complainant Gurmej Singh who is an Advocate has been filed on record through the counsel Sir I.P.Kohli. In the affidavit it is categorically averred that the real brothers are not living peacefully and out of love and affection the injured complainant do not want that his brothers may be convicted for the said offence. The offence under section 307 I.P.C. is not compoundable and therefore the learned counsel for the appellants did not challenge the findings of the guild of the appellants and rather confined his argument to the quantum of sentence. His argument is that in view of the compromise among the real brothers it will be in the interest of justice that the appellants may be let off with the sentence of the period already undergone

by them. Considering that the quarrel was among the real brothers and the injured complainant had filed affidavit to this effect and since they are now residing at peace and they are not a logger-heads at present the conviction of the appellants can be maintained and the sentence awarded to them may be modified as stated above.

In view of the above the appeal partly succeed and is allowed accordingly. The conviction of the appellants under section 307/34 I.P.C. is up-held and maintained. However the sentence awarded is modified to the sentence already under gone by the appellants. The appeal stands disposed of accordingly

Dated 15-9-2003 **(Irshad Hussain, J.)**

ISB